Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1329

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

vs.

TEAMSTERS LOCAL 701, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Respondents' Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit and Appendices

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TABLE OF CONTENTS

Opinion Below 1

Jurisdiction 2

Questions Presented 3

Statute Involved 4

Statement 5

Background 5

1970 negotiations and the second settlement agreement between Local 701 and the International Union 8

Introduction to Argument 15

ARGUMENT:

POINT I: There were facts in the record from which the District Courts did conclude that to require the respondents to exhaust internal remedies would be futile 16

POINT II: The District Courts did not abuse their discretion by refusing to encyst upon the court settlement agreements, provisions for exhaustion of internal union remedies, where those settlement agreements contained no language whatsoever requiring exhaustion 20

POINT III: The present case is sui generis, and the issues which it involves are consequently not of public importance 23

Conclusion 25

TABLE OF CONTENTS

CASES CITED:

Burke v. International Brotherhood of Boilermakers, etc., 427 F.2d 1063 (9 Cir. 1969) 19

Farowitz v. Associated Musicians of Greater New York, Local 802, 330 F.2d 999 (2 Cir. 1964) 19

Hyde v. United States, 225 U.S. 347 23

Semancik v. U.M.W., 466 F.2d 144 (3 Cir. 1972) 19

CODE CITED:

28 U.S.C. 1254(1) 2

29 U.S.C. 185 4

APPENDICES

Appendix "A"
Plaintiff's Exhibit "D" 1a

Appendix "B"
Plaintiff's Exhibit "W"
David Friedland Letter to
Bartosic–3/13/70 ..... 4a

Appendix "C"
Affidavit of Robert A. Kortenhaus
United States District Court
District of New Jersey 7a

OPINION BELOW

The judgment order of the Court of Appeals (Pet. App. 1a-2a)* and the opinion of the United States District Court for the District of New Jersey (Pet. App. 4a-22a) are not reported.

* Reference is to Petitioner's Appendix.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. 1a-2a) was entered on November 17, 1975. A petition for rehearing *en banc* was denied on December 16, 1975 (Pet. App. 3a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether there were facts in the record from which the District Courts could have concluded that to require the Respondents to exhaust internal union remedies would be futile; and

2. Whether the District Courts abused their discretion by refusing to encyst upon the Court settlement agreement sued upon, provisions for exhaustion of internal union remedies, where those settlement agreements contained no language whatsoever requiring exhaustion; and

3. Whether the issues presented by the Petition are of public importance.

STATUTE INVOLVED

This action arose under Section 301(a) of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. 185 (Pet. B. 2).*

* Reference is to Petitioner's Brief.

STATEMENT

This litigation arises out of a dispute between the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Petitioner) and Local 701 (Respondent).

Local 701 sued the International for the breach of two separate contracts (Resp. Appendix p. 1a-6a), each entered into a settlement of litigation pending against the International in both State and Federal Courts and before the National Labor Relations Board.

A nine-day trial before the United States District Court for the District of New Jersey resulted in a jury verdict for the Local finding that the International breached both contracts. Local 701 was awarded damages in the full amount claimed.

On November 17, 1975, the Third Circuit Court of Appeals affirmed the District Court verdict and found that the District Court had jurisdiction. A hearing *en banc* was denied on December 16, 1975.

Background

During the period beginning 1952 and ending in 1967, Local 701, although affiliated with the International Union, refused to participate in either nation-wide or area-wide collective bargaining. Indeed, at the time the Local was chartered in 1952 (TR 57:12)* the employees represented by Local 701 were sixty-one cents per hour behind the economic benefits enjoyed by employees represented by the other teamster unions in the New Jersey-New York area.[1]

* Trial transcripts page and line.

1. Mr. Coar's testimony (TR 60:5-10) "We had a vast differential in monetary wages. We had less holidays, less vacations. We didn't have an eight-hour workday. So in general it wasn't just a differential in no pension, but there was also differentials in wages and in other fringe benefit areas such as pension and welfare."

With long strikes occurring in 1954, the Local was able to close this differential. However, the local's relationship with all teamster unions in the New Jersey-New York area during this period of time was hostile as these locals tried to break Local 701's strikes.[2]

By 1967, bargaining entirely on its own, and without any support from its sister teamster unions, or from its own International (except for strike benefits which were paid for one strike), Local 701 was able to negotiate certain benefits superior to those enjoyed by other teamster locals in the New Jersey-New York area. In particular, these superior benefits consisted of an additional ten cents per hour which was to be paid into Local 701's Pension Plan.

Then, on September 30, 1966, General President Hoffa ordered Local 701 to sign a power of attorney (P. Ex. "VV") which would have constituted the International the sole collective bargaining agent for the employees formerly represented by Local 701 (See TR 61:25; 64:20-21; 67:15-25; 68:1-6). At that time Local 701 refused to sign the power of attorney forms and instead instituted a suit in the New Jersey Court system, challenging *inter alia* the validity of the constitutional provisions by which the International sought to bind Local 701 to nation-wide and area collective bargaining, and challenging those provisions of Article XVI Sec. (a), which would have required

2. Mr. Coar's testimony (TR 293:19-25) "In 1954 at the anniversary date of the contract, that being August 31st, on September 1 a strike started. With the exception of one teamster union, local 617, all other teamster unions in this New York area who had terminals in Jersey City, in Paterson, in Hudson County and in New York their men came into the New Brunswick Area where our men were on strike and performed the very pick-ups and deliveries for (TR 294:1-9) those same companies that our men were striking. 617 did support us and I testified to that in Shines Express in Jersey City. They honored our picket line, they would not send their men into Trenton and they respected our pickets at the Jersey City Terminal. The other unions came in, came into New Brunswick to do the work that we performed and broke our system lines pickets. They broke our strike because our men were on strike in New Brunswick." Mr. Coar's testimony was uncontradicted in the record.

Local 701 to apply to the General Area Board for protection of its "better conditions."

The Local alleged that it had certain autonomous rights by reason of special contracts entered into by and between it and the International Union. The Complaint specifically objected to the so-called intra-union remedy provided for by Article XVI, Sec. 4A, in that said "intra-union remedy (sic!)" would transfer the decisional process as to whether a proposed contract will "deprive its involved members of particular existing conditions of general application" from the members of Local 701 to the General Executive Board of the International Union. This suit ended in a Court Approved settlement agreement entitled "Memorandum of Understanding between Local 701 and the International Union" executed on October 10, 1970 (Resp. App. p. 1a)* by virtue of which Local 701 maintained its ten cent differential advantage over the other New Jersey-New York unions, and the International agreed not to "execute an agreement on behalf of Local 701 which will not contain all of the provisions contained in this rider" (5(a) of Resp. App. p. 3a). For its part Local 701 agreed to withdraw all litigation pending in the various state and federal courts and before the National Labor Relations Board (See 5(b) of Resp. App. p. 3a).

A mere glance at the aforesaid settlement agreement indicates that no provision was made therein for exhaustion of any intra-union remedies, or resort to the Union constitutional procedures challenged in the settled complaint.[3] In the period from 1967 to 1970, and after strikes approved by the International Union, Local 701 employees continued to enjoy the additional ten cent contribution into their Pension Plan.

* Reference is to Respondent's Appendix.

3. Petitioner now resurrects the same constitutional provisions and requests this Court to require Respondent to exhaust these same remedies abandoned in the settlement agreement.

1970 negotiations and the second settlement agreement between Local 701 and the International Union

When national and area collective bargaining agreements came up for renegotiations in 1970, the International took the position that its 1967 court settlement commitments had expired and sought once again to compel Local 701 to submit to National and Area negotiations. The Local, as we shall see, successfully resisted these claims (P. Ex. "K", P. Ex. "L"; P. Ex. "N"; P. Ex. "O"; P. Ex. "S"; P. Ex. "T"; P. Ex. "V").*

On January 7, 1970, Local 701 learned that the Eastern Conference of Teamsters (that branch of the International representing locals from the New England States down to Florida, including all of the Eastern Seaboard States), (TR 56:17-25; See TR 112:22, TR 113:18-25), and the Policy Committee which reports to the International, " at the top level" (TR 57:4-8), had submitted a demand to the employer groups for equalization of contributions on behalf of Local 701 and all the other local unions involved (P. Ex. "EEE-1").

On January 12, 1970, the International wrote to the President of Local requesting copies of contracts between the Local "covering over-the-road, city cartage and/or dock operations" (P. Ex. "K"). The same letter instructed the Local not to renew any such contracts without the prior approval of the International, and states that, "the Local Union and the involved Employers shall become parties to the National Master Freight Agreement, and the New Jersey-New York Supplement thereto, if the work involved comes within the operations covered by those Agreements." In this connection, the attention of the Local was called to the provisions of Article XII, Section 11(a), (b), (c) and (d) and Article XVI, Section 4, of the International Constitution (P. Ex. "K"). To the foregoing letter from International the Local responded by letter dated January 22, 1970 (P. Ex. "L"), which stated that:

> ". . . it was clearly established by representatives of the International Union our attorneys and representatives of Local 701 that in fact, there was no contract and to date, none has been totally compiled by the International Union on our behalf covering those points ratified by our members under the mail referendum as well as those points protected under the memorandum of Settlement approved by Judge Matthews."
>
> ". . . Local 701 cannot tell any employer that they must become parties to the National Master Freight Agreement or the New York-New Jersey Supplement thereto. We have been advised by our attorneys in view of the course of events which took place some three years ago when the same question was raised, that serious consequences, along with damages, could flow to Local 701 particularly in view of the fact that our membership has mandated certain instructions to the Executive Board of this Local Union."

The same letter expressed emphatic disapproval of the content of the letter from the International which had evoked that response. The letter of February 3, 1970 (P. Ex. "N") from the International to the Local warned that the International was obliged to assure compliance with its Constitution, and that, if the members of the Local were permitted to vote to override those provisions, the Local President would be held "responsible if further action is required by the International . . ." The correspondence between the Local and International became thereafter progressively recriminatory.

Ultimately, counsel for the Local confirmed by letter that which had been agreed upon with International by way of a telephone conversation, that any wage increase

* References are to exhibits at trial.

negotiated by International "be, in the case of Local 701, applied on top of the existing wage levels"; that any increases negotiated by International with respect to pension or welfare contributions shall be in the case of Local 701 "paid on top of the existing Local 701 welfare and pension contribution rate"; that any additional monies made available from the Cost of Living Index should "be applied uniformly throughout the entire Country"; and that "the agreement . . . between the International Union and Local 701, dated October 13, 1967, does not have to be renegotiated since it is in full force and effect and, therefore, automatically applied at this time" (P. Ex. "W"). At, or about the same time, in view of the increasing enmity between the Local and the International, a settlement conference was held in Washington between the General Vice President of the Internatioal Unoin, Vice President Trerotola and Walter Shea, Executive Assistant to the General Vice President (TR 150: 24-25). That conference ended with the understanding by Local 701 that the International was "going to honor the contract that we relied upon . . . I am speaking of the 1967 agreement that was arrived at before the Superior Court Judge Matthews" (TR 150:2-25).

The General Vice President of International advised the President of the Local (P. Ex. "X") that the letter from the attorney for the Local dated March 13, 1970 adequately summarized the contents of the General Vice President's letter on the application of the increases to be negotiated for the new agreement "including the application of the proceeds of the cost of living article during the life of the agreement." The Local was therefore requested to countersign the General Vice President's letter and return it to him. The Local considered this letter from International to be a conditional response to the agreement as set forth in Local's letter of March 13,

1970, refused to countersign said letter and instituted suit in the U.S. District Court.[4]

This action was dismissed by the Local in consequence of various negotiation conferences which resulted in International's unconditional agreement to the provisions of Local's March 13, 1970 letter as evidenced by a telegram from the General Vice President to the President of the Local, dated March 18, 1970, confirming that:

> "(1) Mr. Friedland's letter of March 13, 1970 represents our complete agreement as to the matters contained therein;
>
> (2) Our understanding does not in any way apply to garage, maintenance or clerical employees. This telegram is being sent pursuant to an agreement reached during a telephone conference call on March 18, 1970, in which you, Mr. Jacob Friedland and Mr. Bartosic participated that no later than March 30, 1970 Local 701 will dismiss the lawsuit which it has instituted against the International Union due to a misunderstanding as to the status of negotiations."

Upon receipt of the aforesaid telegram, Local 701 withdrew its lawsuit, withdrew all its demands upon the employers and the International that it be permitted to negotiate its own collective bargaining agreements and relied completely upon the International, the National Over-the-Road and City Cartage Policy Negotiating Committee, its sister teamster locals, and the other defendants herein, in the negotiations of new collective bargaining Master Area Supplements and Riders.

4. Local 701's position, *inter alia*, was that the 1967 settlement agreement had not expired, automatically applied, and contained guarantees that had to be incorporated in the forthcoming contract and that ". . . the legal recourse pursued by our members and this local union three years ago is clearly apart from the I.B.T. Constitution . . ." (P. Ex. "O").

The Local advised the Middlesex Freight Carriers Association on March 23, 1970, that the dispute between th International and the Local "has been completely resolved and a full understanding reached" (P. Ex. "AA"). However, not even that acknowledgment eliminated the differences btween the Local and the International. On April 7, 1970, the International informed the Local that "an Agreement had been reached on monetary items and left only area supplements to be completed . . ." Two days later, according to the uncontradicted evidence, Internatinoal Vice President, Samuel Provenzano, President of Local 560, and a representative of the International, notified the President of Local 701 that the latter would have to agree to accept less of a monetary package than other locals in the New Jersey-New York area were receiving and that all New Jersey-New York locals had combined to oppose Local 701, and would not support in the future any legitimate picket lines and would strike any employer who agreed to give Local 701 the same wage increases and pension and welfare increases being negotiated by other Teamsters Locals in the North Jersey area. The fat was again in the fire, and Local 701 responded in its "confidential" hand-delivered letter of April 19, 1970 (P. Ex. "DD"). That letter was addressed "To All North Jersey-Metropolitan Area Freight Locals Att: Mr. Sam Provenzano, Spokesman," and in that letter the Local President stated in part that:

> "Our members will not take less for your benefit! As far as any help, let the record be clear, as I told you, you never gave us any help and in fact, you ran down a legitimate 'sanctioned' picket line involving Transcon!
>
> ". . . I want to respond to your implied coercement to make our members take less than what the International has already agreed to protect for us. We will not depart or give up the independently negotiated 10¢ which we got for ourselves . . . without your aid, or anybody else's for the matter."

A day or two after the aforesaid letter was sent, Local 701's President, Mr. Coar, received a call from International Vice President Joe Trerotola, who requested that he come to Washington (TR 191:17-21). Coar's testimony as to the conversation, which was uncontradicted, was as follows:

> "A. Joe T said to me: 'Bob, you know, we're all teamsters.'
>
> And I said, 'That's correct, that's why I'm here.'
>
> He said, "I want to talk to you about the flare up you had with Sammy. Why don't you go along with us? Why don't you back up and you'll get our help every time you need it.'
>
> And I said: 'Joe, the members of Local 701 authorized me their spokesman to protect the contract with the National Union and their differential. I can't go over their heads. You're asking me to sell them out.'
>
> And I told him under no uncertain terms that I would not give up my position regardless of what Sammy done or what the committee done.
>
> And he said to me: 'Well, I'm telling you as a vice president you either back up or you'll never get our help. I'll never endorse one of your slates or approve any of your out of work benefits. 'Now, Bob . . .' and this is Trerotola '. . . I want to be conciliatory.'
>
> I said: 'How can I be conciliatory to you, Joe when you're telling me you're trying to kill the Local Union I represent?' (TR 192:10-25; TR 194:1-6).
>
> "At the conclusion of the luncheon Joe said: 'Well, you understand my position as International Vice

> President, I got to do it. You're causing a lot of trouble and I want you to know what's going to happen if you don't back up.'
>
> I said: 'Joe T. I respect your position; you work for the International. I work for over three thousand members.'
>
> And he paid the lunch check. That was the end of the conversation as I recalled it." (TR 193:20-25; TR 194:1-2).

On April 22, 1970, a meeting was held in Washington, D.C. at the International Headquarters and in General Vice President Fitzsimmon's conference room. Various vice presidents of the International were present and participated at the meeting as well as attorneys for the International Union. (See TR 307:19-25; 308:1-25; 231: 3-25; 356:6-13; 357:1-17; 362:5-11; 366:13-17; 367:5-23; 372:13-16; 373:1-15; 376:10-23; 378:P390 inclusive; 393: 23-395:20 inclusive; 492:6-25; 493:1-8, 25; 494:1-21; 495:1-25; 496:2; 497:3-4, 9-14, 21-23; 505:14-25; 506:1-5; 513:20-25; 514:1-14). Representatives of the employer groups were also present. Local 701 was not present, nor invited. The meeting ended with an agreement granting an additional ten cents to every other New Jersey-New York teamster local with an agreement that Local 701 *would not get* the ten cents. (This agreement between the Unions and employers was ultimately reduced to writing. (P. Ex. "EEE-2") At trial Petitioner introduced no testimony whatsoever to contradict these occurrences. Indeed, Petitioner maintained the pretense that it had not participated in, nor had anything to do with, what it contended was the independent action of the New Jersey-New York locals. The jury found against Petitioner upon that issue; and Respondent has not appealed from that finding. Nor does Petitioner contest the jury's finding that the International's action constituted a breach of the

two separate settlement contracts entered into between the Local and the International. Its Petition is based solely upon the contention that the Local was required to exhaust remedies provided in the International constitution, notwithstanding the fact that neither settlement agreement contains one word about exhaustion.

Introduction to Argument

Our argument will be directed to convince this Court that both contracts were entered into as settlement of litigation in State and Federal Courts and that Petitioner's attempt to encyst upon these contracts the very same constitutional provisions which were challenged by the settled litigation is in reality a masked attempt to vitiate the settlement agreements. The record of the case below will demonstrate that these contracts were intended to be effective without resort to the normal union remedies which Petitioner seeks now, some ten years later, to cause us to revert to. We shall demonstrate further that there were ample facts upon the record from which at least two separate District Court Judges properly concluded that to require Respondent to exhaust internal union remedies would be futile.

Finally, we observe that the present case is *sui generis* arising from a unique factual pattern which is not likely to arise again and is consequently not of public importance.

ARGUMENT

Point I

There were facts in the record from which the District Courts did conclude that to require the respondents to exhaust internal remedies would be futile.

The International bases its Petition for a Writ of Certiorari upon an alleged abuse of discretion by the District Court in refusing to require the Respondent to exhaust internal union remedies. Its Petition (Pet. B 17) states that

> "There was no factual showing whatsoever in support of a claim of futility or other excuse for failure to exhaust internal remedies."

This statement, to put it simply and bluntly, is an outright misstatement of the record below. There was substantial uncontradicted evidence [5] from which the District Courts properly concluded that exhaustion of internal union remedies would be futile. (Trial Exhibits "D", "X", "W", "K", "L", "N", "O", "S", "Y", "V": TR 307:19-25; TW 308: 1-25; RE 321:3-5; TR 356:6-13; TR 357-1-17; TR 362:5-11; TR 366:13-17; TR 367:5-23; TR 372:13-16; TR 373:1-15; TR 376:10-23; TR 378-390 inclusive; TR 393:23-RE 395: 20 inclusive; TR 492:6-25; TR 493:1-8, 25; TR 494:1-21; TR 495:1-25; TR 496:1; TR 497:3-4, 9-14, 21-23; TR 505: 14-25; TR 506:1-5; TR 513:20-25; TR 514:1-14; TR 309: 5-9; TR 374:10-18; TR 376:10-23; 378-390 inclusive; 371: 6-25; 372:13-16; 373:1-15; 374:10-18; 375:15-21; 393:23-25; 394:1-25; 395:1-20; 500:11-25; 501:1-9; 502:1-17; 667:3-22).

5. The International made no effort whatsoever to introduce any evidence to contradict the Local's assertions as to futility other than its naked and otherwise unsupported contention that the General Executive Board could have ruled otherwise.

A general description of that evidence follows:

1. A Verified Complaint containing paragraphs 51, 55, 58 and 59 raising the issue of bias and asserting that the International could not, and would not, redress violations of its own constitution; and
2. The Affidavit of Robert A. Kortenhaus read into the record before Judge Wortendyke (Resp. App. p. 7a-11a).
3. A demonstration of a long lasting enmity between the International and Local 701 established initially through documentation and later through testimony at trial; and
4. Overwhelming and uncontradicted evidence establishing the direct participation of the International in the breach of its contracts; [6] and
5. The International in its Answer to the Complaint ruled on every issue adversely to the Local and issued orders directing the Local to give up its position which the Local strenuously resisted.

There are two rulings made by the District Court below upon exhaustion of remedies. First, Judge Wortendyke's conclusion upon the original Motion (Petitioner's App. 15a-17a); and the second, Judge Lacey's refusal to dismiss for exhaustion upon denying judgment n. o. v. on the record. The record before Judge Wortendyke consisted of a Verified Complaint, unusual in nature primarily because it incorporated as exhibits practically all of the documentary evidence actually introduced at trial. An examination of Judge Wortendyke's opinion, which contains a thorough analysis of that documentary evidence,

6. Upon appeal the International admitted breach of its contracts and participation in the breach, though at trial the International denied breaching its contracts and denied participating in the breach. The International has not once, since the verdict or before, taken any action whatsoever to remedy what is now a conceded breach of its contracts with the Local.

should, in and of itself, be sufficient to dispose of Petitioner's unstated inference that Judge Wortendyke was "operating in a vacuum." That record demonstrated that the International, through its General Council, members of the Board of the Eastern Conference of Teamsters and its National Negotiating Committee, authorized and participated in the negotiations which resulted in the elimination of Local 701's differential, and that when its activity was discovered by the Local it launched a "cover up" operation.[7] The final agreement which constituted the breach, was an equalization rider which was approved by the International pursuant to the provisions of the National Master Freight Agreement, and was executed in the office of the International President's conference room (TR 309: 5-9; 374:10-18; 376:10-23; 378-390 inclusive). Indeed, International Vice President Calabrese stated the International's stand at a meeting of Middlesex Motor Freight Carriers Association to wit: Local 701 would be bound to the negotiations and riders which eliminated Local 701's ten cents differential advantage (TR 393-395:20 inclusive; TR 500-502 inclusive). To sum up, there was substantial evidence from which the Court below could have, as it

7. The record before Judge Wortendyke, as noted, consisted primarily of documentary evidence. In addition the allegations of the Complaint were supported by Affidavit. Furthermore there was read into the record the Affidavit of one of the employer members of the negotiation committee which showed the pervasive activity of the International and the breach of its contracts with the Local. A brief summary of these facts demonstrated:

(a) That all of the negotiations which resulted in the breach of Local 701's contracts were conducted under the authorization of, and pursuant to, the direction of the International.

(b) That there was direct involvement by a substantial number of the International officers and representatives and the breach of the Court settlement contracts to wit:

Several International Vice Presidents; the presidents of at least two joint councils of teamsters; the President of the International, Frank Fitzsimmons; members of the International President's staff; the International's attorneys, including its general and house counsel.

All of the aforesaid individuals participated in the various acts constituting a breach of the Court settlement agreements and participated and caused the damages sustained by the Respondent. (See Transcript references at Respondent's Brief, page 16.)

did, conclude that to require the Local to exhaust union remedies to protect its ten cents differential advantage would have been futile. The International, in short, through every agency at its command, had exerted all of its power and authority to eliminate Local 701's ten cents differential advantage and, indeed, succeeded in its efforts. In view of the breach of its contracts, the only problem remaining was to compensate the Local for its loss in money damages.

The Third Circuit relying upon its decision in *Semancik v. U. M. W.*, 466 F.2d 144, 151 (3 Cir., 1972) held that ". . . where the internal appeals structure is 'controlled by those to whom the plaintiff is opposed', exhaustion has been deemed futile and contrary to the purposes of the LMRDA," citing also *Burke v. International Brotherhood of Boilermakers, etc.*, 417 F.2d 1063 (9 Cir., 1969). The Court also states at p. 151 that "where the union has consistently taken a position opposed to that of the plaintiff and makes no indication that it will alter its views, there is no purpose in requiring an adjudication by the organization," citing *Farowitz v. Associated Musicians of Greater New York, Local* 802, 330 F.2d 999, 1002-03 (2 Cir., 1964). The evidence before the District Courts in exhibits and testimony shows a continuing adversity of the parties over a period of many yeas. The history of this case is replete with enmity on both sides *e.g.*, injunctions against trusteeships, litigation in the State and Federal Courts. The contract that finally resulted was an arm's length settlement agreement negotiated between two adverse, if not hostile parties. As the District Courts below found, under these circumstances, it certainly would be futile to require exhaustion before the party against whom enforcement of the contract is sought.

That brings us to the second holding of the Courts below to wit: That the existence of such internal union

remedies is not clear. What is clear is that the contracts sued upon do not contain any language whatsoever requiring exhaustion of union remedies. These contracts were designed to set forth the working conditions (monetary, grievance procedures, etc.) which were to be incorporated by the International in any collective bargaining contract negotiated covering Local 701. These contracts would enure to the benefit of all employees in the industries, including employees who were not members of the International Brotherhood of Teamsters, and who have no recourse whatsoever to internal union remedies. An examination of the settlement contracts (Res. App. p. 1a-6a) demonstrates that they contain none of the usual provisions incorporated in a union constitution and that they seek to achieve objectives which are substantially extra-union in nature. The settlement agreements, in short, are not intended to deal with internal union relationships but rather to set forth the conditions of employment under which employees working under the jurisdiction of Local 701 contracts would be employed. They were not designed to magnetically fuse with those provisions of the International Constitution relied upon by the International as purportedly requiring exhaustion.

Point II

The District Courts did not abuse their discretion by refusing to encyst upon the court settlement agreements, provisions for exhaustion of internal union remedies, where those settlement agreements contained no language whatsoever requiring exhaustion.

An examination of both of the Court settlement contracts clearly demonstrates that there is not one single word in either agreement requiring exhaustion of internal union

remedies (Res. App p. 1a-6a). For this reason alone this Court does not have to reach the issue of whether a suit brought under a union constitution, relating solely to internal union affairs, must be dismissed for failure to exhaust internal union remedies. This suit was not brought under the provisions of the International Constitution and, indeed, is not subject to it. Respondent Local 701 predicated jurisdiction on separate, valid contracts between it and the International, extra-constitutional in nature, wherein the Petitioner agreed in future collective bargaining to protect benefits obtained by Local 701 for employees.[8] Conspicuously absent in these contracts are normal constitutional provisions. The contracts deal with wages and hours and working conditions and do not deal with internal union affairs. In fact, this contract was later incorporated into a collective bargaining agreement in 1970 between Local 701 and the Middlesex Motor Freight Carriers Association. The first paragraph of the contract deals with wages; health, welfare and pension fund contributions; and cost of living—purely collective bargaining items. The second paragraph is a Maintenance of Standards clause where Local 701's superior position will be preserved. The third paragraph deals with grievance procedures available to all employees. The fourth paragraph, which is to be incorporated into any future agreements, deals with the execution of the contract, providing for autonomy of Local 701 over Pension and Welfare Funds, free from the International's control. The fifth paragraph described the *quid pro quo* of the contract. In return for Local 701 withdrawing all litigation, the International will not execute any contract that does not contain any of the aforementioned provisions. Thus, every

8. It is important to emphasize that the benefits of the contract enured to the employees as a group and not just union members *e.g.*, the monetary benefits. This is not a contract relating strictly to internal union procedures, but for the benefit of all employees, many of whom have no recourse to internal union procedures.

provision with which we are concerned deals with purely collective bargaining items, totally outside the ambit of the constitution. Respondent sued Petitioner for breach of that contract; it is not suing on the union constitution, which covers internal union affairs.[9]

The fact that these extra-constitutional contracts settled litigation where exhaustion was an issue, and where that issue was abandoned in the settlement agreements, vitiates any argument that Respondent was obligated to exhaust any internal union remedies.

Petitioner's allusions to a "grievance" that the Local had with the International is a sad attempt at characterizing the instant suit as a purely internal squabble. This suit was brought on a breach of contract claim by the Local, not on the basis of a grievance. The reaffirmation of this contract by the correspondence of 1970 (P. Ex. "W"; P. Ex. "X"; P. Ex. "Z") again contains no reference to any internal remedies that the parties were contractually bound to pursue prior to recourse to the courts. The agreements sued on herein could have contained alternative remedies to the parties, *e.g.*, mandatory arbitration or other remedies, but do not. For the Court to find that the Local should have exhausted internal remedies under the International Constitution would, in effect, return the parties to their respective positions in Court prior to the 1967 settlement agreement and prior to 1970. In other words, the Local would be forced to begin again its original challenge to the authority of the International. Surely this would cause an outrageous perversion of justice and would deprive the Local of its rights to negotiate a settlement of a dispute with an adverse party.

Also inappropriate is Petitioner's attempt, to term the contract sued upon "an ambiguous agreement . . ." (Pet.

9. Indeed, those claims which were based upon violation of the union constitution were dismissed by Judge Wortendyke (Pet. App., p. 13a-15a).

B p. 15). To the extent that the Court settlement agreements involved intricate matters involved in collective bargaining they constitute the *final settlement* of all such disputes (emphasis added). In reality Petitioner is trying to undo these settlements so that it may now rearrange the relationship between the Local and the International on terms different than those contained in the settlement agreements, and more favorable to the International.

Point III

The present case is *sui generis*, and the issues which it involves are consequently not of public importance.

As must now readily be apparent, the present case involves a unique fact pattern obviously falling well outside of the perimeters of the "usual" exhaustion case. Here, the Local has sued upon Court settlement agreements which are completely silent with respect to the issue of exhaustion. Here the Local has successfully reversed the usual International Union role[10] and has constituted the International its agent, operating under strict instructions as to its authority to negotiate collective bargaining contracts on behalf of the Local. The goal of the settlement agreements was to protect certain better monetary conditions enjoyed by employees working under the jurisdiction of the Local rather than to provide a system of adjusting and governing Local-International internal relations. As previously noted, the contracts sued upon

10. The International is relying upon the generalized conception of International-Local relationships in which the International assumes a parent-authorative role. Mr. Justice Holmes long ago observed that "It is one of the misfortunes of the law that ideas become encysted in phrases and thereafter for a long time cease to provoke further analysis." *Hyde* v. *United States*, 225 U.S. 347, 384, 391. For the purpose of this case at least, the record, not the generalized concept, should define the relative relationship of Local 701 and the International.

were entered into a settlement of litigation challenging those very provisions of the International Constitution now sought to be resurrected as a requirement for exhaustion of union remedies. This is an unusual factual arrangement; and certainly does not provide any guidance to the resolution of internal exhaustion of remedies claims.

In short, the exhaustion issues posed by the unique facts of this case are not likely to occur again, nor would a decision upon the issues likely be of interest to anyone but the litigants.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

FRIEDLAND & FRIEDLAND,

/s/ Jacob Friedland
JACOB FRIEDLAND
Attorney for Respondents

TOOLAN, ROMOND, ABBOTT & DOMENICHETTI,

/s/ John E. Toolan
JOHN E. TOOLAN
Attorney for Respondents

April, 1976

APPENDICES

APPENDIX "A"

Plaintiff's Exhibit "D"

RIDER TO LOCAL 701 AGREEMENT
– MEMORANDUM OF UNDERSTANDING –

Conferences between the International Union and Local 701 were held on October 10 & 11, 1967 for the purpose of settling all existing disputes and litigation between the parties and to settle the terms of the Master Freight Agreement Supplement and Rider as it applies to Local 701. The provisions of this rider shall prevail over the terms of the National Master Freight Agreement and Supplement Agreement only to the extent specifically provided for herein.

The parties have agreed as follows:

1. Economic Items:

Local 701 will receive the following–

A. The general wage adjustment as follows:

November 1, 1967	14¢ per hour
April 1, 1968	15¢ per hour
April 1, 1969	15¢ per hour

B. Additional contributions to Health, Welfare & Pension Funds:

November 1, 1967	2 1/2¢ to Welfare
April 1, 1968	2 1/2¢ to Pension
April 1, 1969	2 1/2¢ to Pension

C. Cost of living adjustment on April 1, 1968 and April 1, 1969 with a maximum of 4 cents for each adjustment. The first adjustment to be for the period 9/1/67 to 4/1/68.

D. The cost of living adjustment (six cents) to which Local 701 is entitled under the provision of its current Labor Agreement expiring 10/31/67.

2. Maintenance of Standards:

All conditions of employment contained in the current Local 701 Agreement expiring October 31, 1967, relating to wages, hours of work, fringe benefits and local general working conditions, and all established local past practices, providing for better wages, hours and working conditions than those contained in the National Master Freight Agreement and Supplement shall be maintained at not less than the highest standard in effect at the signing of this Agreement. Such better conditions shall prevail notwithstanding the provisions of any other agreement. Any grievance or dispute concerning the aforesaid matters shall be adjusted or processed in accordance with the grievance and arbitration procedures set forth in the Local 701 Agreement expiring October 31, 1967.

3. (a) Grievance Procedure:

All discharge cases shall be processed in accordance with the grievance and arbitration procedures provided for in the Local 701 Collective Bargaining Agreement expiring October 31, 1967.

(b) All other disputes and grievances shall be processed in accordance with the provisions of the National Master Freight Agreement and Supplement except that deadlock cases before the Joint Local Committee shall go directly to the Eastern Conference Joint Area Committee for their consideration and decision. Wherever reference is made in the National Master Freight Agreement or the Supplement, to the Joint Local Committee, it shall, in the case of Local 701, refer to the existing Local 701 Labor Management Panel and shall, to all intents and purposes, act as the Joint Local Committee.

(c) All references to the Joint Area Committee set forth in the Supplement shall not be applicable to Local 701.

(d) Disputes which are settled between employer and Local 701, or through the Joint Local Committee at any stage of the proceedings shall be final and binding on all parties. The International Union, the Local or the employer shall have the right to submit matters involving the interpretation of National Master Freight Agreement or Supplement pursuant to the provisions of said Agreement.

4. Contract Execution:

The International Union has not and will not negotiate any changes in the management or administration of the Welfare and Pension Funds as provided for by the Trust Agreements. The provision of this clause shall be incorporated in any future agreement.

5. (a) Settlement of Litigation:

The International will not execute an Agreement on behalf of Local 701 which will not contain all of the provisions contained in this Rider.

(b) Local 701 will withdraw all litigation now pending in the various Federal and State Courts and before the National Labor Relations Board. This understanding will be read into the record of the case pending before the Superior Court of New Jersey.

DATE: 10/10/67 Approved—Local 701—IBT

Approved-International
Brotherhood of Teamsters, etc.

By: /s/ Thomas E. Flynn
THOMAS E. FLYNN

By: /s/ Robert J. Coar
ROBERT J. COAR
President

APPENDIX "B"

Plaintiff's Exhibit "W"
David Friedland Letter to Bartosic—3/13/70

March 13, 1970

Florian J. Bartosic, Esq.
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Dear Mr. Bartosic:

This letter will serve to confirm my conversation with you of even date. I have been exploring with you on behalf of Local 701 the general relationship of Local 701 and the International Union with respect to the negotiations of a new collective bargaining agreement. I understand that the International has agreed to the following:

1. That any wage increases negotiated by the International Union as a part of the national or area collective bargaining contracts will be applied to Local 701 and put on top of the current wage rights under the existing Local 701 bargaining agreement. In other words, if the International Union negotiates an increase in wages of 20¢ that 20¢ will be, in the case of Local 701, applied on top of the existing wage levels.

2. Any increases negotiated by the International Union with respect to pension or welfare contributions shall in the case of Local 701 be paid on top of the existing Local 701 welfare and pension contribution rate.

3. Any additional monies which are forthcoming from the Cost of Living Index will be applied uniformly throughout the entire country. In other words,

if the International Union decides to apply monies which are forthcoming from the Cost of Living Index to wages, then such monies will be applied to wages uniformly to all unions throughout the country. The same principle will follow with respect to the application of proceeds of the Cost of Living Index for pension and welfare contributions.

4. The agreement which was entered into by and between the International Union and Local 701, dated October 13, 1967, does not have to be renegotiated since it is in full force and effect and, therefore, automatically applies at this time.

Local 701's major concern is that it not lose any wages, hours or working conditions which are better than those contained in the National Master Freight Agreement and Supplements and further that its membership has the full advantage of all benefits negotiated by the International Union for the forthcoming contract so long as the International Union assures Local 701 that the wages, hours and working condition benefits will be applied uniformly and in the case of economic items, on top of existing wage, pension and welfare contribution levels, I think that a harmonious relationship will exist between Local 701 and the International Union.

Accordingly, if you are in agreement with the statements contained in this letter please have initialed on behalf of the International Union on the extra copy of this letter which I am sending to you for that purpose and I will advise Local 701 to call an immediate membership meeting for the purpose of obtaining authority to comply with the request contained in Mr. Fitzsimmons' letter of February 25, 1970.

I would appreciate an early reply since Local 701 has advised me that it wishes to fully comply with the pro-

visions of the International Constitution and By-laws, and does not wish to invite disciplinary action by reason of a misunderstanding as to intent. In this regard since your most recent telegram, dated today, requests affirmative action by March 16, 1970 I would appreciate an immediate response prior to that date from you and, accordingly I am sending this letter to you special delivery.

Very truly yours,

FRIEDLAND, SCHNEIDER & FRIEDLAND

By: /s/ David Friedland
DAVID FRIEDLAND

DF:dd
Special Delivery

For the International Brotherhood of Teamsters:

———————

APPENDIX "C"

Affidavit of Robert A. Kortenhaus
United States District Court
District of New Jersey

STATE OF NEW JERSEY)
) SS.
COUNTY OF UNION)

I Robert A. Kortenhaus, of 1371 Chapel Hill, Mountainside, N.J. 07092, having been duly sworn, upon my oath depose and say.

1. I am the Vice-President of Bilkay's Express and Jersey Coast Freight Lines, both of whom have collective bargaining relationships with Local 478 and Local 701 and Local 807 Teamsters (IBT).

2. I was, and am on the New York-New Jersey Supplemental Negotiating Committee.

3. On or about January 7, 1970, and on dates subsequent thereto, we began negotiations for new supplemental agreement with the New Jersey-New York Supplemental Union Negotiation Committee. The following were represented on or attended meetings of the committee: A. Sam Provenzano, president of Local 560; B. Joe Mangan, Local 807; C. Lester Cornnel, Local 816; D. Louis Alenuino, Local 707; E. L. McDermott, Local 641; F. Willie Fanel, Local 617; G. Jimmy Ruffino, Local 445; and H. occasionally a representative of Local 701; and I. Flemming Campbell, a representative of the Eastern Conference of Teamsters and others.

4. On or about the second or third week of negotiations, after various meetings with the I.B.T. International, the Union negotiating committee demanded ten cents equal-

ization on behalf of Locals 37, 478, 469, 863, 816, 807, 805, 806, 707, 641, 617, 445 282 excluding Local 701.

5. The same union committee through its representatives including Flemming Campbell said that if Local 701 were to receive the additional ten cents to upset the equalization they were trying to obtain by coercion, strike, force or arm-twisting or threat of economic action, that the other unions would want an additional ten cents. If Local 701 were, however, to obtain the additional ten cents through Court action the other Locals would not demand the additional ten cents.

6. I asked to put the above in writing but the union committee refused and said "We have an understanding."

7. On numerous occasions the union negotiating committee threatened economic action against all the employers unless the employers agreed to pay the ten cents to all Locals listed above in Paragraph 4, except Local 701.

8. Because of the economic threats the New York-New Jersey employers' negotiating committee agreed to the ten cents for all Locals except Local 701, at a meeting on Tuesday, April 21, at the Hospitality House.

9. The New York-New Jersey Locals except Local 701 assured the employer committee that if Local 701 struck, they would operate into the territory and not respect picket lines and they would "run them down." Sam Provenzano said they would "run the line, run them down—we stayed still for them over the years while they came to us and they are not going to get more than us."

10. Because of these threats and asurances the New York-New Jersey employer supplemental negotiating committee met on April 19th with the Middlesex Motor Freight Carriers Association and suggested that in view of these

developments, no Local 701 employer should give the additional ten cents, and if they did the New York Locals would want another ten cents in addition.

11. The Middlesex employees group executive committee agreed that they had no recourse but to stand still and do nothing.

12. After this on April 21, 1970, the agreement set forth in paragraph 8 of this affidavit was reached.

13. At the meeting on April 21, 1970, the employers wanted to put the ten cent increase in Article 56 of the supplement, in the increments agreed upon, and at that time Mr. Dominick Calabrese, who is known to me as an International vice-president, refused and said, "We cannot put it in the supplement. We have to put it in a rider because if we put it in the supplement, Coar will get it because of the agreement between Local 701 and the International." He was quite specific and said that he was advised by the International's attorneys that if the ten cents went in a Local rider with each individual employer that Coar wouldn't get the ten cents. At this time the negotiating committees agreed to meet at nine A.M. on April 22, 1970, at the I.B.T. office building, and the attorneys, Louis Brenner, for the employers, and David Previant, of the I.B.T., were to work out the rider language. The meeting was set up with Mr. Previant by Mr. Calabrese, who called him from the room.

14. On April 22, 1970, at the I.B.T. offices in Washington, Mr. Raymond Beagle, who is chairman of the National Negotiating Committee for Trucking Employers, Inc., told the employer group which had arrived to meet with Previant, Calabrese, Joseph Tretolla, that "The meeting is off. Previant told me that Local 701 is filing a conspiracy suit under the Sherman Antitrust Act, and if he participated in the drawing of the Rider he could not de-

fend the conspiracy, and that the language would have to be worked out between the commitments." The group then adjourned to Mr. Fitzsimmons' conference room and met with Calabrese, Flemming Campbell, Joe Tretolla (who is the International vice-president).

15. Calabrese worked on the language with Lou Brenner for the handling of the ten cents and reviewed the entire supplement agreement as to changes. After the tentative language was agreed to, Calabrese said he wanted to review the Rider with his attorneys. I said, "Previant is next door; get him in here. Are we playing games with each other?" Someone said, "You know they can't bring him in." Calabrese left the room from time to time to confer with counsel. Hugh Bains, who is an International lawyer, came into the room two times.

16. The meeting ended with an agreement at five o'clock granting the ten cents to all Locals but Local 701, in a rider. Local 707 only received seven cents at the same dates in different increments.

17. The memoranda of agreement provides that the ten cents may be allocated by the trustees of the respective funds to either welfare or pension.

18. At time prior to the working out of this agreement the Locals other than Local 701 offered to operate into the jurisdictional territory of Local 701 and handle the freight of the struck carriers through their North Jersey terminals if Local 701 struck.

19. We were told by union negotiating team that the International said that the ten cents should be in the rider and could not be put in Article 56 because of the correspondence between the International and Local 701 and the withdrawal of their, Local 701, suit.

20. Last night I saw a telegram dated April 24, 1970, PA533, addressed to Robert Coar, president of Local 701, signed by Frank E. Fitzsimmons. It says in part—

"The International Union did not authorize such negotiations nor participate in them. On the contrary, the International Union advised the parties that no strike or threat of strike would be authorized to secure such benefits. Nor has the International Union or the National Negotiating Committee negotiated or authorized the negotiation, of any general monetary benefits over and above the announced, nationally negotiated monetary package by an other unions which are party to the national master freight agreement." For the reasons set forth in this affidavit those statements are not true.

I have read the 8 pages of this my affidavit and I swear that they are true.

/s/ Robert A. Kortenhaus
ROBERT A. KORTENHAUS

NOTARIZED